

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
AT DEHRADUN**

Present: Hon'ble Mr. Ram Singh

-----Vice Chairman (J)

Hon'ble Mr. A.S.Nayal

-----Member (A)

**CLAIM PETITION NO. 13/DB/2013**

1. Hari Dutt Deotala, S/o Late Sri Murli Dhar Deotala, aged about 57 years, presently posted as Personal Secretary to the Additional Secretary, School Education, Govt. of Uttarakhand, Dehradun.
2. Madan Mohan Bhardwaj, S/o Late Sri Vishnu Dutt Bhardwaj Aged about 54 years, presently posted as Private Secretary to the Principal Secretary, Finance, Govt. of Uttarakhand, Dehradun.
3. J.C.Pant, S/o Late Sri Vishnu Dutt Pant, aged about 57 years, presently posted as Private Secretary to the Additional Secretary, Irrigation Department, Dehradun.
4. Dinesh Chandra Gairola, S/o Late Sri Narayan Dutt Gairola, aged about 57 years, presently posted as Senior Private Secretary to Secretariat Admission Department, Govt. of Uttarakhand, Dehradun.

.....Petitioners

**VERSUS**

1. State of Uttarakhand through Principal Secretary, Admission Department, Civil Secretariat, Dehradun.
2. Principal Secretary, Karmik, Govt. of Uttarakhand, Dehradun.
3. Principal Secretary, Law, Govt. of Uttarakhand, Dehradun.
4. Trilok Chandra, Senior Private Secretary.
5. M.S. Kunjwal, Senior Private Secretary.
6. Ram Chandra Kala, Senior Private Secretary.
7. Gopal Singh Nayal, Senior Private Secretary.
8. Kailash Chandra Joshi., Senior Private Secretary.
9. Prakash Chandra Upadhyay, Senior Private Secretary.

10. Mohan Lal Uniyal, Senior Private Secretary.
11. R.S.Dev, Senior Private Secretary
12. Rajendra Prasad, Senior Private Secretary.
13. Arvind Prakash Bhatt, Senior Private Secretary.
14. Dinesh Chandra Karnatak, Senior Private Secretary.
15. Kishan Chand Sharma (Retd.) Senior Private Secretary.
16. Anil Kumar Mangain, (Retd.) Private Secretary.
17. Dinesh Chandra Purohit, (Retd.) Senior Private Secretary
18. Shanker Dev Arya, Senior Private Secretary.
19. Mohan Prasad Khansali, (Retd.) Private Secretary.
20. Roop Chandra Gupta, Principal Private Secretary.
21. Harshverdhan Joshi, (Retd.) Private Secretary.
22. Prakash Chandra Bhatt, Principal Private Secretary.
23. Rajbala Tomer, Principal Private Secretary
24. Virendra Singh Khairola, Senior Private Secretary
25. Subhash Chandra Panwar, Senior Private Secretary.
26. Ashok Kumar, Senior Private Secretary.
27. Hari Prasad Belwal, Senior Private Secretary.
28. Ramesh Chandra Bisht, Senior Private Secretary.
29. Om Prakash Pandey, Senior Private Secretary.
30. Sohan Lal Dobhal, Senior Private Secretary.
31. Dignpal Singh Rawat, Senior Private Secretary.
32. Sab singh Negi, Senior Private Secretary.
33. Virendra Kumar Kaushik, Senior Private Secretary.
34. Laxmi Aggarwal, Senior Private Secretary.
35. Dhyan Singh, Senior Private Secretary.
36. Smt. Shobha Bhatt, Principal Private Secretary.

.....**Respondents**

Present: Sri B.B.Naithani, Ld. Counsel  
for the petitioners

Sri V.P.Devrani, Ld. A.P.O.  
for the respondent Nos. 1, 2 & 3

Sri T.R.Joshi, Ld. Counsel  
for Respondent Nos.4,5,6,7,8,9, 10,11 & 13.

**JUDGMENT****DATED: MARCH 29, 2019****Hon'ble Mr. Ram Singh, Vice Chairman (J)**

1. The petitioners through this petition have sought the following relief:-

*“(i) To issue order or direction for setting aside the impugned order reflected in the Noting Sheets dated 11.2.2013 along with order dated 17.4.2012 (contained in Annexure No. A-1 & A-2) together with the seniority list dated 27.4.2009 along with its effect and operation also after calling the entire records from the respondents.*

*(ii) To issue order or direction directing the respondents to redraw the seniority list taking into consideration the initial date of appointment of the petitioners in the parent departments and place above the petitioners to the respondents and also allow the benefit of notional promotion along with all consequential benefits from the date when the same has been given to the private respondents.*

*(iii) Any other relief which the Court deem fit and proper in the circumstances of the case.*

*(iv) Cost of the petition be awarded to the petitioner.”*

***(It is to mention that in relief (i), the date of seniority list has been shown 27.04.2009, whereas, the actual date of such seniority list is 29.04.2009.)***

2. After creation of the State of Uttarakhand, a new Secretariat was established, for which services of all the petitioners and private respondents, who were Stenographers in the different Government Departments, were requisitioned, as State of U.P. and Central Government could not provide sufficient staff to the Secretariat of the State of Uttarakhand.

3. In view of the difficulty and exigencies, the State of Uttarakhand framed the Rules for merger by transfer of those Stenographers, who had been requisitioned in the Secretariat for discharge of the work of Stenographers. Such Rules were known as the उत्तरांचल सचिवालय वैयक्तिक सहायक, अवर वर्ग सहायक, सहायक लेखाकार, टंकक,

अनुसेवक के पदों पर संविलियन नियमावली, 2002 (hereinafter referred to as "**Amalgamation Rules, 2002**"). After obtaining options, petitioners and private respondents were absorbed on the post of P.A. as per these rules and necessary orders about merger of the Stenographer/P.As. in the Secretariat, were passed.

4. After fixing seniority of the P.As, working in the Secretariat, the Stenographers, merged in the cadre, were placed junior to them and inter-se seniority of the merged officers and employees, was to be fixed on the basis of their substantive appointment and on the basis their length of service, reckoned from their respective parent departments as per Rule 6 of the Amalgamation Rules, 2002 and the Uttarakhand Government Servants Seniority Rules, 2002 (herein after referred to as "Seniority Rules, 2002").

5. Record also reveals that the Amalgamation Rules, 2002 were challenged before the Hon'ble High Court in various writ petitions, in which validity of Rule 6(2) of the Amalgamation Rules, 2002 was challenged, on the ground that said Rule is violative of the Article 14 of the Constitution. The said writ petitions were dismissed and the Rules were upheld. The SLP before the Hon'ble Apex Court was also dismissed, with the observation that "in case any individual person is affected by the improper implementation of the Rule, then he can approach the proper forum for redressal of his grievance."

6. After the order of the Hon'ble Apex Court, the representations were submitted by the P.As. for determination of their seniority in accordance with the Rules and they had challenged the seniority list, already issued on 8.12.2004 in view of the direction of the Hon'ble Apex Court. After considering their representations, a final seniority list dated 29.04.2009 was issued and seniority was settled in accordance with Rule 6 of the Amalgamation Rules, 2002 as well as Seniority Rules, 2002.

7. The petitioners have disputed that the seniority list has not been issued in accordance with Rule 6 (2) of the Amalgamation Rule, 2002 and the respondent has fixed the inter-se seniority of the Stenographers, appointed as P.As. on the basis of the Seniority Rules, 2002 which was notified on 13.8.2002, later in time of the Amalgamation Rule, 2002, which was issued on 22.06.2002.

8. After issuance of the seniority list dated 29.04.2009, Sri R.C. Kala and Gopal Singh Nayal submitted their representation against the same in which the State Government sought reply of the petitioners and all other P.As. hence, petitioners and other P.As. submitted their representations alleging that their seniority has wrongly been fixed. Thereafter, a committee was constituted to look into the matter in consultation with the various departments i.e. Karmik and Law, but on 27.09.2012, the representations were rejected and the seniority list issued on 29.04.2009 was held to be final.

9. Feeling aggrieved by the order, a petition was earlier filed before this Tribunal, which was registered as Claim Petition No. 13/DB/2013, mainly on the ground that inter-se seniority should be fixed according to Rule 6 of the Amalgamation Rules, 2002 whereas, it has wrongly been fixed as per Seniority Rules, 2002; and inter-se seniority should be fixed on the basis of substantive appointment in the parent department, whereas, the respondent has considered the pay scale of the employees as main criteria for determination of their seniority.

10. The petition was opposed by the Government and private respondents on the ground that the seniority was fixed according to the Amalgamation Rules, 2002, and the Seniority Rules, 2002 which has overriding effect and the final seniority cannot be challenged and inter-departmental consultation has no meaning, unless a final order was passed and the petition was filed after a long delay and laches and,

hence, the respondents on the ground of merit as well as on delay and laches, opposed their petition.

11. The matter was decided by this Tribunal by a detailed judgment dated 18.05.2016 along with the merits of the case. The question of delay and laches, raised by the respondents was broadly discussed in 20 pages of the judgment, referring to various judgments of the Hon'ble Apex Court. Although, on the merits of the matter, impugned seniority list and impugned orders were held, liable to be quashed, but on the ground of delay and laches, it was held that the petitioners have challenged the final seniority list settled in 2009, after a long delay and on the ground of delay and laches and limitation, the claim petition was dismissed.

12. The judgment of this Tribunal was challenged before the Hon'ble High Court of Uttarakhand in writ petition (S/B) No. 239 of 2016 and the Hon'ble High Court vide its order dated 19.09.2018, remitted this petition with the following orders:-

*“Accordingly, the writ petition is allowed. Impugned order dated 18<sup>th</sup> May, 2016 is set aside and the matter is remitted back to the learned Uttarakhand Public Services Tribunal to decide the lis on its own merit, without being influenced by delay and laches.”*

13. In compliance of the Hon'ble High Court order dated 19.09.2018, the claim petition was again listed for rehearing vide Chairman's order dated 05.10.2018 and parties were again heard on merits of the petition.

14. We have heard both the sides and perused the record.

15. The claim petition of the petitioners has been opposed by the respondents on its merit as well as on the ground of limitation. The Hon'ble High Court vide its order dated 19.09.2018, had directed this Tribunal to decide this matter on its merit, without being influenced by delay and laches. Although, this issue of inordinate delay was earlier

discussed by this Tribunal, but in view of the direction of the Hon'ble High Court, this issue is not being discussed now and treating this petition within time, it is being discussed on its merit.

16. The merit of the petition about seniority list was broadly discussed in the previous judgment dated 18.05.2016 by this Tribunal and concurring with earlier the findings, recorded therein and adding to the same, we conclude that for decision of the matter, following points are to be seen:-

- i. Whether seniority of the petitioners and private respondents should be determined according to the Amalgamation Rules, 2002, or the Seniority Rules, 2002?
- ii. Whether seniority should be counted from the length of service as per Rule 6 of the Amalgamation Rules, 2002 or according to the pay scales, as enumerated in the Seniority Rules, 2002?
- iii. Whether seniority Rules, 2002 will have overriding effect over the Amalgamation Rules, 2002 in the case of the petitioners and private respondents? and
- iv. Whether the seniority list dated 29.04.2009 is as per the law?

17. By taking point no. (i) to (iii) together, we have noticed that Amalgamation Rules, 2002 were promulgated on 22.06.2002, whereas, the Seniority Rules, 2002 came into force on 13.08.2002, i.e. 53 days after the earlier Rules.

18. The petitioners and private respondents were called upon to discharge their work in the Secretariat of Uttarakhand and they were merged in Secretariat cadre after promulgation of Amalgamation Rules, 2002. The employees so working in the Secretariat from the different departments, were asked to file their option, as to whether they would like to join the Secretariat services in terms Amalgamation Rules, 2002 or not? The petitioners as well as private respondents filed their consent and thereafter, joined the services in the Secretariat. The

Government vide order dated 22.07.2002, communicated that seniority will be determined later on, in pursuance to the Amalgamation Rules, 2002. Rule 6 of the Amalgamation Rules, 2002 is the relevant rule for amalgamation & seniority. There was an understanding between the Government and the employees that they are joining the services under the Amalgamation Rules, 2002.

19. The Amalgamation Rules, 2002 promulgated in 2002, clearly provides that how the seniority of persons so appointed in the Government Secretariat would be determined. The Government in persuasion of above Rules, promulgated the Government Order dated 24.06.2002 (Annexure-35) which is quoted as Under:-

“उत्तरांचल शासन  
सचिवालय प्रशासन विभाग  
संख्या- 1729/एक-04/2002  
देहरादून: दिनांक 25 जून, 2002

कार्यालय-ज्ञाप

अधोहस्ताक्षरी को यह कहने का निदेश हुआ है कि पूर्व में कार्मिकों की कमी को देखते हुए विभिन्न राजकीय विभागों के 23.12.2001 तक के सम्बद्ध तथा वर्तमान में सचिवालय में सेवास्थानान्तरण पर तैनात कार्मिकों का उत्तरांचल सचिवालय में ‘उत्तरांचल सचिवालय वैयक्तिक सहायक, अवर वर्ग सहायक, सहायक लेखाकार, टंकक, अनुसेवक के पदों पर संविलियन नियमावली, 2002’ के अंतर्गत संविलियन, तात्कालिक प्रभाव से, किया जाता है।

2- सचिवालय में संविलीन होने वाले ऐसे कार्मिकों का संबंधित पद पर मौलिक नियुक्ति का आदेश, यथास्थिति, बाद में अन्य सेवाशर्तों आदि के साथ पृथक से निर्गत किया जाएगा।

24/6/02  
(पी०सी०शर्मा)  
सचिव।

संख्या: 1729/एक-4/2002, तददिनांक:

प्रतिलिपि निम्नलिखित को सूचना एवं आवश्यक कार्यवाही हेतु प्रेषित:-

- (1) महालेखाकार, उत्तरांचल प्रकोष्ठ, इलाहाबाद।
- (2) प्रमुख सचिव/सचिव, उत्तरांचल शासन।
- (3) निजी सचिव, मा० मुख्यमंत्री जी।
- (4) समस्त मा० मंत्रीगण के निजी सचिव।
- (5) कोषाधिकारी, देहरादून।
- (6) वित्त अधिकारी, उत्तरांचल शासन।
- (7) संबंधित विभागाध्यक्ष/कार्यालयाध्यक्ष।
- (8) संबंधित कर्मचारियों को इस निर्देश के साथ कि यदि वे सचिवालय में संविलियन हेतु इच्छुक हों तो अपनी सहमति प्रस्तुत करें।
- (8) विभागीय आदेश पुस्तिका।

आज्ञा से,

24/6/02  
(पी0सी0शर्मा)  
सचिव।

20. Above Government Order was issued under Article 166 of the Constitution and options were sought under the Amalgamation Rules, 2002. The Stenographers, working in the Secretariat, had given their consent and they were merged in the Secretariat services in accordance with Rule 6 of the Amalgamation Rules, 2002. Thereafter, their seniority had to be determined in accordance with Rule 6(2) of the Amalgamation Rules, 2002, which reads as under:-

“6(2)संविलियन के पश्चात कर्मचारी की सचिवालय संवर्ग के संबंधित पद पर पारस्परिक ज्येष्ठता संबंधित संवर्ग के पद पर मौलिक नियुक्ति की तिथि के आधार पर निर्धारित करने के पश्चात सचिवालय सेवा के कनिष्ठतम कर्मचारी के नीचे ज्येष्ठता सूची में रखा जायेगा। सचिवालय में संबंधित पद के विरुद्ध सचिवालय संवर्ग के कनिष्ठतम कर्मचारी के नीचे ज्येष्ठता निर्धारण के समय जिन कर्मचारियों का विभिन्न विभागों के अन्तर्गत एक की वेतनमान होगा उनकी ज्येष्ठता उनके मूल विभाग में उनकी मौलिक नियुक्ति की तिथि से सेवा अवधि की गणना के आधार पर निर्धारित की जायेगी।”

21. Hence, on the date of amalgamation of services, the petitioners as well as private respondents changed their position and they were absorbed in the Secretariat service from their concerned departments.

22. The contentions of the petitioners have been, that their seniority was to be determined in accordance with Rule 6(2) of the Amalgamation Rules, 2002 but their seniority was fixed by the Government under the Seniority Rules, 2002, which were promulgated later in time; and at the date of amalgamation of services of the petitioners and private respondents in the Secretariat, the Seniority Rules, 2002 were not in existence hence, the relevant Rules for determination of inter-se seniority were the Amalgamation Rules, 2002. We agree with this argument.

23. We do not agree with the argument of the respondents that the Seniority Rules, 2002 are having any overriding effect, because of the reasons that a combined reading of Rule 1, 2 & 3 of the Seniority Rules, 2002, is that, these Rules came into force on 13.08.2002 and there is no substantial record that prior to the framing of Seniority Rules, 2002, Amalgamation Rules, 2002 were taken into consideration. In Rule 6(2) of the Amalgamation Rules, 2002, which was applicable at the time of amalgamation of services, the Seniority Rules, 2002 were not in existence at that time. Hence, legal position is clear that on absorption, the seniority will be fixed according to Rule 6 (2) of the Amalgamation Rules, 2002, on the basis of the date of substantive appointment in the concerned cadre and in such rule, it was specifically provided that all the absorbed employees will be kept en-block junior to the P.As., already working in the Secretariat, but their inter-se seniority will be decided according to the length of their service and not on the basis of pay scales. At the time, when petitioners and private respondents were absorbed in the service, a legal right about seniority and promotion was created from the very date of their appointment, and as on that date, the Seniority Rules, 2002 were not in existence, hence, the relevant Rule for this purpose, was Rule 6(2) of the Amalgamation Rules, 2002.

24. We hold that petitioners' interest was crystallized on the day when they joined Secretariat services on amalgamation i.e. prior to enforcement of the Seniority Rules, 2002, which admittedly came into existence about 53 days after the Amalgamation Rules, 2002. Thus, a person, whose appointment on a post was finalized on a particular date, his service conditions would be governed from that date when, he was appointed to a particular post. Accordingly, in our view, the Seniority Rules, 2002 would not govern the field at the time, when the services of the petitioners were amalgamated. The seniority of the petitioners should be and can be fixed as per the rules in existence at the time of their appointment. The absorption of the petitioners was

made on 25.06.2002, when the Seniority Rules, 2002 were not in existence at all, so their seniority cannot be fixed according to these Rules. The above view also finds support from the judgments of the Hon'ble Apex Court, passed in **Union of India Vs. S.S. Uppal and others 1996(2) SCC pg. 168.**

25. It is also to mention that it was the case of merger of two cadres and seniority after merger of the cadres, can only be decided according the Amalgamation Rules, 2002, wherein merger was provided. Whereas, the Seniority Rules, 2002 does not provide for determination of seniority on amalgamation of two cadres, merged into one.

26. Thus, we are of the view that the petitioners' seniority can be determined according to Rule 6(2) of the Amalgamation Rules, 2002 and not in accordance with the Seniority Rules, 2002, which came into existence later in time and which also does not provide for the situation of determination of seniority on amalgamation of two cadres.

27. Learned counsel for the petitioners has also pointed out that under the Amalgamation Rules, 2002, various persons of different post of the cadre of वैयक्तिक सहायक, अवर वर्ग सहायक, सहायक लेखाकार, टंकक एवं अनुसेवक were merged in Secretariat services and such Rules cannot be interpreted differently in regard to the different post of employees. The petitioners have also pointed out that in case of Anusewak (Peon), the Amalgamation Rules were interpreted and were made applicable for fixation of seniority, according to length of their services and like petitioners, the services of the peon requisitioned from different departments for the smooth functioning of the Secretariat, were also merged in the Secretariat cadre under the Amalgamation Rules, 2002 and seniority list of such peons was prepared by the respondent, on the basis of the date of their substantive appointment and not on the basis of their pay scales, whereas, for the petitioners, a different interpretation was given to the Rules.

28. We hold that the respondents cannot apply two different yardsticks for different categories of employees covered by the same Rules and similar criteria should be applied.

29. We are of the view that for fixation of seniority, pay scales cannot be the criteria, and the date of substantive appointment of persons, should be the criteria for considering their inter-se seniority. The impugned seniority list has been prepared, ignoring the relevant Rule 6(2) of the Amalgamation Rules, 2002, hence, impugned seniority list dated 29.04.2009 and the orders under challenge are liable to be quashed, as such seniority list has not been prepared according to the relevant rules.

30. In view of the above, there is a need for a direction to the respondents to re-draw the seniority list as per Rule 6(2) of the Amalgamation Rules, 2002, considering the initial date of appointment in the parent department and they are also entitled for other consequential benefits.

### **ORDER**

The claim petition is allowed. The impugned seniority list dated 29.04.2009 is hereby set aside along with its effect and operation also. The respondents are directed to re-draw the seniority list afresh, in view of the observation made in the body of the judgment and to place the petitioners at the right place and also to allow all the consequential benefits of service according to their seniority.

No order as to costs.

**(A.S.NAYAL)**  
MEMBER (A)

**(RAM SINGH)**  
VICE CHAIRMAN (J)

*DATED: MARCH 29, 2019*  
*DEHRADUN.*  
*KNP*